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IN THE

SUPREME COURT OF THE UNITED STATES

RUSSELL EUGENE CHARLTON,

Petitioner.

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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TO THE SUPREME COURT OF VIRGINIA

THE COMMONWEALTH OF VIRGINIA, by counsel, respectfully opposes Petitioner's writ of certiorari to review the judgment of the Supreme Court of Virginia in this case.

QUESTIONS PRESENTED

1. WHETHER THE PETITIONER'S CONVICTION OF POSSESSION OF METHAMPHETAMINE VIOLATED THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT BECAUSE THE EVIDENCE AGAINST HIM INCLUDED AN ADMISSION THAT, WHILE THE DRUG WAS NOT HIS, HE KNEW IT WAS IN HIS HOUSE.

2. WHETHER THE SEARCH OF A SMALL METAL CONTAINER EXCEEDED THE SCOPE OF THE SEARCH WARRANT AND, THEREFORE, WAS AN UNREASONABLE SEARCH IN VIOLATION OF THE 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

3. WHETHER THE PETITIONER'S CONVICTION OF A SECOND OFFENSE OF POSSESSION OF MARIJUANA VIOLATED THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

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PREVIOUS COURT OPINIONS

The Petitioner has adequately stated the previous court opinions.

UNITED STATES SUPREME COURT JURISDICTION

The Respondent does not believe the United States Supreme Court has jurisdiction to consider the matters raised by the Petitioner in Questions One (1) and Three (3). The Respondent concedes the Court's jurisdiction to consider the matter raised in Question Two (2)

CONSTITUTIONAL PROVISIONS

The applicable constitutional provisions have been stated by the Petitioner.

STATEMENT OF THE CASE

The evidence on behalf of the Respondent showed that on June 14, 1985, an officer of the Chesapeake Police Department, while executing a search warrant for the Petitioner's residence at

647 Benefit Road, Chesapeake, Virginia, discovered a clear plastic baggie containing a substance later determined to be methamphetamine. This baggie was hidden inside a three-inch long metal canister which was itself concealed inside a larger plastic container. (T.18) When the police first observed the plastic container, it was sitting on an open-topped wooden crate that was located in the Petitioner's den or living room. (T.12) A payment book for an automobile loan in the Petitioner's name was lying on the plastic container. (T.12). Numerous items belonging to the Petitioner were found in the wooden crate.

Before he opened the metal canister, the police officer shook it and determined that something was loose inside. (T.19) The officer testified

that when he opened the canister he was looking for an item of jewelry described in the search warrant as a gold chain. (T.11,19).

After Russell Eugene Charlton had been advised of his constitutional rights, he was questioned on two occasions concerning the seized drug. Initially, he stated he knew the "cocaine" (methamphetamine) was in the plastic container, but he denied that it belonged to him. (T.16) During that interview, he did not name the person to whom the drug belonged. He admitted ownership of all the other items found in the wooden crate with the exception of the plastic container and a pair of sunglasses. (T.16) The second time Charlton was questioned, he denied knowing anything about the marijuana that was found in an ashtray located on a

table in his living room or the methamphetamine. (T.17).

At his trial, Charlton testified he was unaware of the presence of the methamphetamine in his house, and he denied telling the police otherwise. Several witnesses appeared on his behalf and testified they had helped move the wooden crate on which the methampetamine was found to the Petitioner's home several months before his arrest.

ARGUMENT

1. WHETHER THE PETITIONER'S CONVICTION OF POSSESSION OF METHAMPHETAMINE VIOLATED THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT BECAUSE THE EVIDENCE AGAINST HIM INCLUDED AN ADMISSION THAT, WHILE THE DRUG WAS NOT HIS, HE KNEW IT WAS IN HIS HOUSE.

Petitioner contends that his conviction for possession of methamphetamine violated the due process clause of the 14th Amendment to the United States Constitution. In support of this contention, he alleges that the only direct evidence tying him to the drug was his statement when he was arrested that he knew the methamphetamine was in his house. Charlton maintains that this admission was insufficient to establish his guilt beyond a reasonable doubt. Charlton does not elaborate why his conviction based on this evidence violates his 14th Amendment right to due process.

The due process clause of the 14th Amendment has frequently been invoked by this Court in ruling on the admissibility of confessions. The constitutional questions raised in these cases have

concerned the voluntariness of confessions. See, e.g.,Blackburn v. Alabama, 361 U.S. 199, 80 S. Ct. 274, 42 Ed. 2d 242 (1960). The issue raised by Charlton, that his confession was insufficient evidence upon which to find him guilty of possession of methamphetamine, is completely unrelated to the 14th Amendment protection against involuntary admissions of guilt.

Furthermore, Petitioner's failure to raise this issue at the conclusion of his trial or in any of his appeals to other courts bars him from raising the issue for the first time on certiorari to the United States Supreme Court. Graham v. Brotherhood of Locomotive Firemen and Enginemen, 338 U.S. 232, 70 S. Ct. 14, 94 L. Ed. 22 (1949). Stergald v. United States, 451 U.S. 204, 101 S. Ct. 1642, 68 L. Ed. 2d 38 (1981).

However, even if we assume that the Petitioner has properly raised a legitimate 14th Amendment question, there is no merit to his argument that the only evidence against him was his admission that he knew the methamphetamine was in his house.

The methamphetamine was discovered hidden inside a small metal canister which was itself concealed in a plastic box. This box was located in Charlton's living room on an open-topped wooden crate filled with numerous items of his personal property. A payment book for a car loan in his name was resting on the plastic container. Petitioner was alone in his house the night the methamphetamine was seized.

Except for his girlfriend's testimony - that she frequently stayed there, there was no evidence that anyone other

than Charlton lived in the house. The girlfriend denied any knowledge of the methamphetamine.

This circumstantial evidence, coupled with the Petitioner's admission he knew the drug was in his house, clearly warranted the trial court's guilty verdict.

2. WHETHER THE SEARCH OF A SMALL METAL CONTAINER EXCEEDED THE SCOPE OF THE SEARCH WARRANT AND, THEREFORE, WAS AN UNREASONABLE SEARCH IN VIOLATION OF THE 4TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

Charlton alleges that the police exceeded the scope of their search warrant when they opened a metal canister in which approximately one gram of methamphetamine was concealed.

The Virginia Supreme Court has held that in executing a search warrant, police officers are entitled to investigate any area where the item identified in the search warrant could reasonably be concealed.

In adopting this rule, the Virginia court joined a growing number of state and federal courts which have held that the scope of a lawful search is determined by the description in the search warrant of the items to be seized. See, e.g., Harp v. State, 136 Ga. App. 897, 222 S.E. 2d 623 (1975).

This rule was endorsed by this Court in United States v. Ross, 456 U.S. 798, 102 S. Ct. 2157, 72 L. Ed. 2d 572 (1982). In reversing a Court of Appeals decision invaliding a search of a container found in the defendant's car trunk, the Court held "[the scope of the search]... is

defined by the object of the search and the places in which there is probable cause to believe that it may be found". United States v. Ross, 456 U.S. at 824.

In applying this test to the facts of this case, it is first necessary to ask what items were identified in the search warrant as being the objects of the search. After we have answered that question, we can consider the larger question, to wit; whether the search of the metal container that resulted in the seizure of the methamphetamine was unlawfully broad.

Among the items of stolen property which the police suspected were in the Petitioner's house were several small pieces of jewelry. These items were identified in the search warrant as including two gold chains. The Detective

who seized the methampetamine testified that he was looking for the gold chains when he opened a canister he described as being a metal pill box, three inches in length. The Detective said he shook the canister before he opened it and determined that something was concealed inside. Only after making this discovery did he open the canister and find some loose marijuana seeds and a plastic baggie which contained methamphetamine.

The nature of the items of jewelry identified in the search warrant lent themselves to easy concealment. From the officer's description of the metal canister, it was clear that a small gold chain could easily be hidden inside it. This possibility was enhanced when the officer shook the canister and heard something rattle.

Charlton's claim that the police officer embarked on a general exploratory search the moment he opened the canister ignores both the officer's testimony concerning the objects of his search and the affidavit for the warrant which described the items he suspected were in the house. Not only is this claim unsupported by the evidence, but it would have this Court unfairly penalize the police officer for the meticulous efforts he took in conducting his search.

3. WHETHER THE PETITIONER'S CONVICTION OF A SECOND OFFENSE OF POSSESSION OF MARIJUANA VIOLATED THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES.

Charlton contends that his conviction for possession of marijuana violated

his right to due process as guaranteed by the 14th Amendment. In support of this contention, he maintains there was insufficient evidence, first, to convict him of possession of marijuana and, second, to impose the enhanced punishment for a second offense. A review of the trial record reveals the inadequacy of each of these arguments.

More importantly, neither of these arguments involve the Petitioner's right to due process under the 14th Amendment to the United States Constitution.

CONCLUSION

For the foregoing reasons, the Respondent respectfully submits that this Petition for a Writ of Certiorari to this

Honorable Court should be denied.

Respectfully submitted

COMMONWEALTH OF VIRGINIA

BY _____

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CERTIFICATE OF SERVICE

I, Stephen Givando-Cline, counsel for the Respondent in the captioned matter and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 30th day of July, 1987, I mailed three copies of the foregoing Brief in Opposition to Albert L. Fary, Jr., Esquire, 218 London Boulevard, Portsmouth, Virginia 23704, Counsel for Petitioner.

BY Stephen G. Cline

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